

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

FITBIT, INC.,)	
)	C.A. No. 15-cv-990-RGA
Plaintiff,)	
)	
v.)	
)	
ALIPHCOM d/b/a JAWBONE and)	DEMAND FOR JURY TRIAL
BODYMEDIA, INC.,)	
)	
Defendants.)	

MOTION TO STAY PURSUANT TO 28 U.S.C § 1659

Defendants Aliphcom, Inc. d/b/a Jawbone and BodyMedia, Inc. (“Jawbone”) hereby move to stay this case pursuant to 28 U.S.C. § 1659(a), due to the pendency of a proceeding in the United States International Trade Commission (the “ITC”) involving the identical patents and issues.

Fitbit, Inc. (“Fitbit”) sued Jawbone in the above-captioned action alleging infringement of three patents: U.S. Patent No. 8,920,332; U.S. Patent No. 8,868,377; and U.S. Patent No. 9,089,760 (the “Patents-in-Suit”). *See* D.I. 1. Fitbit and Jawbone are also parties to a proceeding before the ITC under section 337 of the Tariff Act of 1930 in the matter titled, *Certain Wearable Activity Tracking Devices, Systems, and Components Thereof*, Investigation No. 337-TA-973, involving the same three Patents-in-Suit. *See* ITC Complaint, attached as Exhibit A. The ITC issued a Notice of Institution of Investigation naming Plaintiff as complainant and Defendants as respondents on December 1, 2015, and the Notice of Institution of Investigation was published in the Federal Register on December 7, 2015.

28 U.S.C. § 1659(a) mandates that a stay be granted when a case “involves the same issues involved in the proceeding before the Commission,” and a stay is requested by a defendant

within the statutorily established period of time. *See also Fuji Photo Film Co. v. Benun*, 463 F.3d 1252, 1256 (Fed. Cir. 2006) (“[T]he district court must await a final decision from the Commission before proceeding with its action.”).

As the requirements for a mandatory stay pursuant to 28 U.S.C. § 1659 are met—namely that the case involves the same patents as the matter pending before the ITC, and this motion is filed within 30 days of the institution of the action—Jawbone respectfully requests that the Court stay this case until the ITC issues a final decision in the investigation pending between the parties to this action and that action can no longer be appealed. Defendants reserve and do not waive any defenses.

Dated: December 31, 2015

Respectfully submitted,

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